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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

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12 UNITED STATES OF AMERICA,

No. 2:21-CR-111 WBS

13 Plaintiff,

ORDER

14 v.

15 ROBERT ALLEN POOLEY,

16 Defendant.

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20 The government has moved for disclosure of witness
21 Yuri Garmashov's text messages with defendant under Federal Rule
22 of Criminal Procedure 26.2. The defendant objects in part,
23 arguing that portions of these texts should be redacted on two
24 grounds. First, defendant contends that certain texts sent by
25 Garmashov are unrelated to his testimony and should be redacted
26 under 26.2(c). Second, defendant contends that the government
27 cannot compel disclosure of his own texts under 26.2. The
28 government also objects to any in camera proceeding that would

1 exclude the government at which the court would determine
2 whether Garmashov's texts are related to his testimony.

3 Rule 26.2(c) reads:

4 If the party who called the witness claims that the
5 statement contains information that is privileged or
6 does not relate to the subject matter of the witness's
7 testimony, the court must inspect the statement in
8 camera. After excising any privileged or unrelated
9 portions, the court must order delivery of the
10 redacted statement to the moving party. If the
11 defendant objects to an excision, the court must
12 preserve the entire statement with the excised portion
13 indicated, under seal, as part of the record.

14 Under the court's interpretation of this rule, the
15 party requesting reciprocal discovery is not permitted to see
16 any of the statements prior to the court's in camera inspection.
17 Accordingly, the court overrules the government's objection to
18 an in camera inspection excluding the government.

19 In order for the court to determine what portion of
20 Garmashov's statements are unrelated to his testimony, defendant
21 shall produce a list of those statements he claims are
22 unrelated.

23 The government contends that it is entitled to receive
24 defendant's own statements within the text message conversations
25 with Garmashov. It relies on United States v. Losch, No. CR-19-
26 00294-001-PHX-MTL, 2022 WL 2092535 (D. Ariz. June 9, 2022).
27 However, that case is inapposite. There, the government
28 submitted text messages between FBI agents and potential
witnesses for in camera review. The government sought to redact
all the texts from the government agent and left only the
statements of the witnesses. The court found as to one
statement that "the context to this message is necessary to
Defendant's full understanding" and then explained that

1 "additional context is necessary during the conversation"
2 between the agent and another witness. The court thus ordered
3 the government to include the agent's text messages with these
4 witnesses' statements. Nothing in this case addresses
5 disclosure of a defendant's own statements.

6 The court notes that nothing in Rule 26.2 states that
7 a moving party may demand statements of third parties where
8 necessary to give context to the witness's statements.

9 Moreover, the government has not pointed to any authority
10 stating that it may compel disclosure of defendant's own
11 statements to a witness under Rule 26.2. The court is
12 especially wary of requiring a criminal defendant to disclose
13 his own statements and does not find that Rule 26.2 requires him
14 to do so. Accordingly, defendant may redact his own statements
15 within the text conversations with Yuri Garmashov.

16 IT IS SO ORDERED.

17 Dated: May 22, 2024


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

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